The courts are divided as to whether an intention to deceive is essential to the maintenance of an action in tort for misrepresentation, but they all agree that where this intention is present the action will lie. Williston, Sales § 632; Chapin, Torts 411. In an action for rescission, however, a material misrepresentation, intentional or innocent, will support the bill. 15 Columbia Law Rev. 187. But if the statement is a promise or prophecy it is obvious that a present intention not to perform or a present lack of belief in the statement must be present in order that the statement should be a misrepresentation at all. *Field* v. *Seubert Bearing Co.* (1917) 167 N. Y. Supp. 294. Hence, in this class of cases it is immaterial whether the plaintiff proceed at law or in equity. Most courts have permitted an action for a deliberate misstatement of present intention on the ground that a promise to do something in the future embodies a representation of a present intention to perform. *McLean* v. *Southwestern Casualty Ins. Co.* (Okla. 1916) 159 Pac. 660; *McElrath* v. *Electric Investments Co.* (1911) 114 Minn. 358, 131 N. W. 380; *cf. Standard Elevator Co.* v. *Wilson* (1907) 218 Pa. 280, 67 Atl. 463. This present intention, although difficult of proof, is a fact, see *Edginton* v. *Fitzmaurice* (1884) 29 Ch. D. 459; *Adams* v. *Gillig* (1910) 199 N. Y. 314, 92 N. E. 670, and hence the case falls within the general rule that a deliberate misstatement of a past or present fact will support an action in tort. Chapin, *op. cit.* 397. Some courts have refused to adopt this view, *Farris* v. *Strong* (1897) 24 Colo. 107, 48 Pac. 963; *Tufts* v. *Weinfeld* (1894) 88 Wis. 647, 60 N. W. 992, because of the logical difficulty of separating the abstract present intention from the promise or prophecy. Their argument rests on metaphysical grounds which, although believed to be unsound, cannot flatly be contradicted, but certainly considerations of good policy and natural justice seem to lend support to the majority view.

USURY—EXCESSIVE INTEREST DEPENDENT UPON CONTINGENCY.—The defendant loaned a sum of money to the plaintiff in consideration of an assignment of an interest in a vested remainder, payable on the death of the life tenant. According to the mortality tables, the interest on the loan would exceed the legal rate, and actually did exceed it when the debt became due. *Held,* the transaction was not usurious in absence of an intention to take an usurious rate. *Hartley* v. *Eagle Ins. Co.* (Ct. of App. 1918) 58 N. Y. L. J. 1223.

Usury is the taking under contract of more interest for the use or forbearance of money than the law allows. Webb, Usury § 1. Consequently, when the lender stipulates for the repayment of the principal plus the highest legal rate of interest and for additional returns upon a contingency, the agreement is usurious, *Browne* v. *Vredenburgh* (1870) 43 N. Y. 195; *Miller* v. *Life Ins. Co.* (1896) 118 N. C. 612, 24 S. E. 848, unless the contingency is within the borrower's control. *State* v. *Elliot* (1900) 61 Kan. 518, 59 Pac. 1047; *Taylor* v. *Buzzard* (1905) 114 Mo. App. 622, 90 S. W. 126. Since the usury laws apply only to interest for the use or forbearance of money, a rate of return for the loan which includes a fair compensation for other services is not usurious. *Matthews* v. *Cole* (1877) 70 N. Y. 239; see *Smith* v. *Wolf* (1881) 55 Iowa 555, 8 N. W. 429. Similarly, contracts which provide for rates exceeding that permitted by statute but which at the same time risk the repayment of the principal are not invalid, *Chesterfield* v. *Jansen* (1750) 1 Atk. 339; *Goodrich* v. *Rogers* (1882) 101 Ill.

523, on the ground that the excessive rate consists of payment both for the use and for the risk of the sum advanced; as for example, bottomry contracts, *Thorndike* v. *Stone* (1831) 28 Mass. 183, and life annuities. *In re Naish* (1830) 7 Bing. 150. But in every case there must be a reasonable chance that the principal may be lost, or the courts will construe the transaction as one intended to evade the usury laws. See *Missouri, etc. Trust Co.* v. *Krumseig* (1899) 172 U. S. 351, 19 Sup. Ct. 179. The question in the principal case is whether a contract which risks only the legalized return on the loan is within the usury laws, when it provides for a rate greater than that allowed by law, upon a contingency. As a matter of strict interpretation, the older decisions, holding such contracts to be usurious, seem correct, since the only risk involved is the return of the legal rate of interest, which is really no risk, for the amount represented thereby was never advanced by the lender. *Roberts* v. *Trenmayne* (1618) Cro. Jac. 507; *Smith* v. *Nicholas* (1837) 35 Va. 330. But the modern authorities have taken the opposite position, where there is no actual intention to evade the usury statute. *Clift* v. *Barrow* (1888) 108 N. Y. 187, 15 N. E. 327; see *Richardson* v. *Hughett* (1879) 76 N. Y. 55. From the point of view of good commercial policy which has for its object an unhampered exchange of money, the decision in the principal case, overruling a former holding, *Hall* v. *Eagle Ins. Co.* (1912) 151 App. Div. 815, 136 N. Y. Supp. 714, aff'd. 211 N. Y. 507, is commendable. The result reached may be thus analyzed: the principal advanced plus the maximum rate of interest becomes a new legalized principal, the risking of which in its entirety or in part takes it out of the laws of usury in the absence of a factual intention to evade those laws.

VENDOR AND PURCHASER—INNOCENT MISREPRESENTATION—RESCISSION OF CONTRACT—SPECIFIC PERFORMANCE.—The plaintiff in a suit for the return of deposit money and the rescission of a contract for the purchase of realty had bid on lots A and B relying on an innocent misrepresentation made by the auctioneer in regard to lot B. *Held,* although the plaintiff had contracted to buy lot A only because of his expectation of buying lot B, the misrepresentation concerning lot B was not ground for the rescission of the contract to buy lot A, since the contracts were not "complicated"; but it would defeat the defendant's counterclaim for specific performance. *Holliday* v. *Lockwood* [1917] 2 Ch. 47.

It is commonly accepted that a misrepresentation of a material fact, innocent or otherwise, inducing a contract for the sale and purchase of land will be ground either for interference by equity in allowing a rescission of the contract or for a refusal to grant specific performance. See *Bigham* v. *Madison* (1899) 103 Tenn. 358, 52 S. W. 1074; 15 Columbia Law Rev. 187. But as an exception to this, if the mistake is due to the carelessness of the one resisting the performance of the contract, and will not work great hardship, specific performance will be granted. *Tamplin* v. *James* (1880) L. R. 15 Ch. 215. However, since the exercise of the power of specific performance, unlike the jurisdiction over suits to rescind contracts, is entirely discretionary, equity may refuse to grant the vendor specific performance because of the resulting hardship, even though denying the vendee the right to rescind, see *Rudisill* v. *Whitener* (1907) 146 N. C. 403, 59 S. E. 995; *Welch Pub. Co.* v. *Johnson Realty Co.* (W. Va. 1916) 89 S. E. 707, and, therefore, an innocent misrepresentation may not be sufficient to